

**Draft SAFE HARBOR AGREEMENT  
FOR VOLUNTARY ENHANCEMENT/RESTORATION ACTIVITIES  
BENEFITTING LAHONTAN CUTTHROAT TROUT  
ON PRIVATE LANDS WITHIN THE NORTHWEST DPS**

## **1. Introduction**

This Safe Harbor Agreement (Agreement) is made and entered into on the day of 2005, by Nevada Department of Wildlife (NDOW or Permittee) and the U.S. Department of the Interior, Fish and Wildlife Service (Service); hereinafter collectively called the “Parties.” This Agreement implements the Service’s Safe Harbor Agreement final policy (FR 64:32717) and final regulations (FR 64:32706) as revised (FR 69:24084), in accordance with the procedural and substantive requirements of section 10(a)(1)(A) of the Endangered Species Act (ESA).

NDOW is the State agency responsible for the restoration and management of fish and wildlife resources within Nevada’s lands and waters. These resources include 109,894 square miles of land, 667 square miles of water and 529 streams that flow 2,765 miles. There are 892 species of mammals, reptiles, fish, birds, and amphibians under NDOW jurisdiction. Of that number, 790 species are native and 64 are found only in Nevada. In order to most effectively meet these responsibilities NDOW has one State-wide office, three regional offices and 3 additional satellite offices.

NDOW has been involved in Lahontan cutthroat trout, *Oncorhynchus clarki henshawi* (LCT), a federally listed threatened species, management, restoration and recovery since the early 1970’s and reached a new level of responsibility after developing species management plans for the majority of LCT’s historic range (Sevon et al. 1999). These plans describe activities and direction designed to move LCT towards recovery and subsequent de-listing throughout its historic range.

The Agreement encourages proactive conservation efforts by non-Federal landowners while providing them certainty that future property-use restrictions will not be imposed if those efforts attract LCT to their enrolled property or result in increased numbers or distributions of listed species already present. In return for voluntary conservation commitments, the Agreement will extend assurances to the landowner, which will allow future alteration or modification of the enrolled property to its original baseline conditions. Without this cooperative government/private effort, LCT would not otherwise occupy important recovery habitats in the foreseeable future.

This Agreement serves as the basis for the Service to issue an Enhancement of Survival permit under ESA section 10(a)(1)(A) for the “take” of covered, listed species associated with the potential future return of the Cooperator’s enrolled lands to baseline conditions. Under the Safe Harbor Permit that accompanies this Agreement, NDOW can issue Certificates of Inclusion to landowners (Cooperators) who agree to carry out habitat improvement and/or habitat maintenance for LCT and abide by the conditions of the Permit. The Parties anticipate that the maximum level of take authorized under this Agreement and permit will never be realized. Permit issuance will not preclude the need to abide by all other applicable Federal, State, and local laws and regulations that may apply.

This Agreement covers proposed management activities on privately owned land and waters within the Northwest Distinct Population Segment that may affect native or reintroduced populations of LCT; a federally listed threatened species. Under this Agreement, the Permittee will enroll willing private landowners in Cooperative Agreements to develop recovery activities and strategies while providing protections and assurances for incidental takings of LCT on enrolled land.

Landowners enrolled with NDOW under the SHA will receive a Certificate of Inclusion (CI) when they sign a Cooperative Agreement. The Cooperative Agreement will include:

- a map of the property;
- the portion of the property to be enrolled and its stream mileage/feet;
- the property's baseline and biological assessment which would include a thorough stream analysis (with photos) of the enrolled stream miles/feet;
- the specific conservation measures to be carried out, and;
- the responsibilities of both the landowner and NDOW.

## **II. Purpose and Need**

The purpose of this Agreement is to enhance the reintroduction and long-term recovery of LCT within the NWDPS by encouraging private landowners to voluntarily create, enhance, maintain, or restore LCT habitat.

The primary objective of this Programmatic Agreement is to encourage voluntary habitat restoration, maintenance, or enhancement activities to benefit LCT by relieving a landowner, who enters into, and implements, the provisions of a Cooperative Agreement with NDOW, from any additional Section 9 liability under the Act beyond that which exists at the time the Cooperative Agreement is signed (baseline responsibilities). In other words, the objective is to give landowners "safe harbor" from added liability. A SHA encourages landowners and assures them that they will not be subjected to increased threatened species restrictions should their beneficial stewardship efforts result in an increased threatened species population. As long as landowners carry out agreed upon conservation measures on their property and maintain their baselines, they may continue or undertake future management activities.

A large percentage of the existing LCT populations and designated recovery streams within the NWDPS occur on private lands somewhere within their perennial reach. As of the writing of this agreement there are 53 streams that have been identified in recovery plans or have active management occurring on them. Of these 53 streams (~470 miles) there are only 6 streams that do not flow through private lands. Efforts to recover this species without involving and incorporating these private lands and landowners may impact our ability to make measurable progress towards LCT recovery. It is with this acknowledgement that NDOW intends to enroll any private landowners who are willing to allow the introduction or expansion of LCT within their private lands and waters into conservation agreements. These Cooperative Agreements will offer protections and assurances to allow for inadvertent takings of LCT for individuals who agree to provide voluntary conservation benefits to the species within their private holdings. Additionally, the enrollee may cancel this agreement at anytime and return to the established baseline conditions, which were present prior to enrollment.

### 3. LIST OF COVERED SPECIES

This Agreement covers the following Federally listed species:

Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) (Threatened).

Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) is the only salmonid native to the Lahontan basin. LCT was once distributed throughout the basin and drainages of ancient Lake Lahontan but currently within the Northwest Distinct Population Segment are forced to survive as small populations in the isolated headwaters of streams in many mountain ranges in Nevada and Oregon. Settlement of the Great Basin resulted in the loss of LCT habitat as livestock grazing, urban and mining development, water diversions, hybridization, and competition with non-native trout led to significant declines in the range and numbers of this unique trout species. In response to these declines, Lahontan cutthroat trout was listed as endangered in 1970 and reclassified as threatened in 1975. In January of 1995, the Service issued the recovery plan for the Lahontan cutthroat trout, which was followed by NDOW's Quinn River/ Blackrock species management plan in 1999.

Lahontan cutthroat trout were historically common in the Quinn River, Blackrock and Little Humboldt subbasins of the Humboldt River system. The Blackrock Drainage alone may have had as many as 46 streams occupied by LCT. Presently, LCT is thought to occupy only 15 percent of their historic stream habitat in the Quinn River and Blackrock drainages. The populations have suffered from habitat loss, hybridization with nonnative salmonids and recent extended periods of drought. Recovery actions in the Quinn River drainage are a number one priority item in the Service's 1995 Lahontan Cutthroat Trout Recovery Plan.

To facilitate recovery of LCT, the NWDPs team was formed in 1999. Members of the team are comprised of personnel from the Service, NDOW, Oregon Department of Fish and Wildlife, Bureau of Land Management, U.S. Forest Service, and University of Nevada, Reno. Expanding on the themes identified in the 1995 Recovery Plan, the team has been working to restore habitat and networked populations based upon the results of recent research.

### 4. RESPONSIBILITIES OF THE PARTIES

#### Permittee:

Nevada Department of Wildlife responsibilities include:

- 1) Administer the Permit including enrolling individual landowners via Certificates of Inclusion and Cooperative Agreements. Upon signing of a Cooperative Agreement, NDOW will issue a Certificate of Inclusion to a Cooperator authorizing incidental take of LCT on the Cooperator's lands.
- 2) Provide copies of the draft Cooperative Agreements to the FWS for review and concurrence with the recommended activities/actions, baselines and biological assessments.
- 3) Provide copies of all Certificates of Inclusions and Cooperative Agreements executed during that calendar year to the Service .
- 4) Provide an annual report to the Service (See Section 12.2).
- 5) If warranted, recommend procedures/actions Cooperators may implement to avoid future take based on any take which occurred as described in past annual reports.
- 6) Provide notification of non-compliance.

The U.S. Fish and Wildlife Service responsibilities include:

- 1) Provide NDOW comments within 15 business days of receiving a draft Cooperative Agreement. If no comments are received within 15 business days, NDOW may proceed to finalize the Cooperative Agreement.
- 2) Develop biological assessments and determine baseline conditions with NDOW for a minimum of the first five Cooperative Agreements. After this period of calibration between the two Parties finishes, NDOW will submit their biological assessment (See Section 12.2) with the Cooperative Agreement for the Service's concurrence unless a unique situation arise which warrants both Parties involvement.
- 3) Upon satisfaction of all other applicable legal requirements, the Service will issue a Safe Harbor permit to NDOW in accordance with ESA section 10(a)(1)(A), authorizing take of Lahontan cutthroat trout as a result of lawful activities within the enrolled property. The term of the permit will be [30] years.
- 4) Provide a qualified biologist(s) for coordinated implementation of the biological and compliance monitoring as needed on an annual basis.
- 5) If warranted, recommend procedures/actions Cooperators may implement to avoid future take based on any take which occurred as described in past annual reports.

The Cooperator's responsibilities include:

1. Comply with their individual Cooperative Agreement and
2. Provide reasonable access to his or her property for NDOW and FWS, or their representatives.

In addition to the following stipulations, the Parties will work cooperatively on other issues as necessary to further the purposes of the Agreement. Moreover, nothing in this Agreement shall limit the ability of Federal and State conservation authorities to perform their lawful duties, and conduct investigations as authorized by statute and by court guidance and direction.

## **5. BASELINE DETERMINATION**

The Parties understand that the Permittee may enroll a wide variety of privately owned lands that could have a wide degree of baseline conditions. It is understood that baseline determinations will be made at a site-specific level and described in individual Cooperative Agreements to capture each unique situation. Baseline may be determined as numbers/populations of LCT, habitat conditions or both. Typically baseline determinations will be based on habitat conditions due to the migratory behavior of the species and the need to reestablish networked populations. Habitat conditions which define baseline will be detailed in each individual Cooperative Agreement based on each particular situation and will be based on a variety of conditions such as stream width, riparian vegetation, substrate, etc. Enrollment of the private landholdings will permit access to many miles of publicly owned stream habitat for LCT restoration and recovery activities that is currently not useable.

## **6. DESCRIPTION OF ENROLLED LANDS**

This Agreement will cover all, or portions of the NWDPS for LCT (Map 1). The Northwest DPS encompasses both the Quinn River and Blackrock Basin found in northern Nevada. Due to jurisdictional boundaries within NDOW the North Fork of the Little Humboldt River drainage will also be covered under this Permit

The potential enrollment properties may be any private lands associated with a perennial stream inside the borders of these hydrologic basins. The potential covered lands may range in elevation from 3,900 to 9,700 feet and represent many of northern Great Basin vegetative communities as well various irrigated agricultural crops.

## **7. LANDOWNER MANAGEMENT ACTIVITIES FOR COVERED SPECIES**

Customary management actions considered covered under the Permit for which take may be authorized on the enrolled lands are livestock management which includes number of livestock, season of livestock use (timing), type of livestock, stocking rates, frequency of grazing, and livestock water supply; agricultural actions which includes crop planting and harvest, irrigation timing, duration, volume, run-off management, source, and diversions and recreational pursuits (i.e fishing). These management actions may result in takings of LCT, but take should be minimized by implementing the conservation measures that will be included in the Cooperative Agreement (Attachment 1). Incidental take covered by the Cooperative Agreements does not include any take that drops the number of LCT or occupied habitat below the established baseline. Lahontan cutthroat trout expansion into these private lands and associated public lands will allow reconnection of streams previously unused by LCT, achieving the networked populations vital to LCT long-term recovery.

## **8. CONSERVATION MEASURES**

Conservation measures that may be implemented on enrolled properties to assist with the recovery of LCT will be as varied as the types of lands and landowner. While this section lists many possible conservation measures for each management action, all possible measures can not be anticipated. Each cooperator will not be expected to implement the full set of measures. The conservation measures to be implemented will be specific to each individual's baseline, habitat conditions, and management needs.

Conservation measures implemented by the landowner to manage livestock grazing to meet a desired habitat goal may contain the following elements: control of stocking rates (Number/density of animals per unit area), manipulation of grazing season, and/or changes in duration, frequency and livestock types. Other measures may include livestock exclusion fencing, off-site water development and herding strategies.

Private landowners actively farming to produce an agricultural crop will have the opportunity to implement a multitude of conservation measures to improve habitat conditions for LCT. Agricultural conservation measures could include crop selection, establishment of riparian buffer zones, and fertilizer and land disturbance (plowing and tilling) management. Manipulations in flow diversion timing, duration, and volume may be implemented as well as runoff minimization practices.

These grazing and agricultural mitigation measures may be utilized to minimize sediment production, algae blooms, water temperature increases, and water quality degradation, as well as to provide for increases in stream flows and improvements in riparian habitat conditions.

Several additional conservation measures that may be implemented include road or trail management (including improved crossings or fish passage structures), riparian vegetation plantings, rehabilitation projects, and stream habitat improvement projects. Other options may

exist that are not apparent until a willing landowner and biologist have the opportunity to exchange ideas. The overall goal is to produce conservation measures that are mutually beneficial to the cooperator and the long-term existence of LCT. As conservation measures are formulated, they will be included in that landowner's specific Cooperative Agreement and added to this list of conservation measures for future use.

## **9. AGREEMENT DURATION**

The Service's Safe Harbor Policy states that the length of Agreements must be of sufficient duration to "reasonably allow enough time to achieve the expected 'net conservation benefit' for the listed species. This Agreement becomes effective upon issuance of the Section 10(a)(10)(A) Enhancement of Survival Permit and will be in effect for 30 years. The section 10(a)(1)(A) permit authorizing take of the species will also have a term of 30 years from the effective date of the permit. This time frame allows enough time to implement fully functional networked populations within a water shed or basin. Given the probable species response time to the planned conservation measures, the Service estimates it may take five years of implementing this Agreement to fully reach a net conservation benefit for the species, although some level of benefits will likely occur within a shorter time period. The actions which need to be implemented to support a networked population are as follows: one year to construct a temporary barrier, two years to treat area behind barrier to get rid of undesired fish species, and at least two years to repopulate or reintroduce LCT and remove the temporary barriers hence the five-year time frame.

The 30-year permit term will be advantageous to NDOW because of the longer time period available to plan and implement future land-use activities. The permit term will benefit species conservation because impacts associated with take of individuals or habitat above the baseline may not occur in the short term. The Permit and Agreement may be amended to extend the term upon agreement of NDOW and the Service.

NDOW may enroll Cooperators under Cooperative Agreements from the date this Agreement becomes effective until 10 years prior to its termination. Obligations under Cooperative Agreements will be in effect variable lengths of time depending on the property covered and the agreement of the Cooperator and NDOW. However, the minimum duration of obligations will be for 10 years. Upon signing of a Cooperative Agreement, NDOW will issue a Certificate of Inclusion to a Cooperator authorizing incidental take of LCT on the Cooperator's lands.

## **10. ASSURANCES TO THE COOPERATOR REGARDING TAKE OF COVERED SPECIES**

Under this Agreement, NDOW is authorized to enroll private landowners via the Cooperative Agreement and Certificate of Inclusion, in efforts to sustain LCT on their property. Cooperators may continue current land use practices or undertake other lawful activities on their property that are covered under the Cooperative Agreement, as long as these activities do not result in take of LCT below the established baseline. If any Cooperator anticipates an activity that could result in take of LCT, NDOW and the Service should be given an opportunity to capture and/or relocate LCT out of harms way.

To return the enrolled property to baseline conditions, a Cooperator must demonstrate that baseline conditions were maintained and that activities necessary to achieving a net conservation benefit were carried out for the duration of the Agreement. At the end of the permit term, and



before a permit expires, a Cooperator may reduce LCT numbers or occupied habitat to the established baseline to avoid accruing additional take under the ESA. However, no species or habitat shall be impacted until the Cooperator has given NDOW, the Service, or their representatives prior notice of at least 30-days so that individuals can be relocated.

## **11. NET CONSERVATION BENEFIT**

Historically, LCT occurred in what were considered networked populations or metapopulations (Ray *et al.* 2000; USFWS 1995), which refers to a collection of discrete local breeding populations. The potential for networked populations to persist despite local catastrophes has long been recognized (Huffaker 1958; Andrewartha and Birch 1954). Networked populations are those where individuals experience different environmental conditions at different locations but are capable of moving between these locations at sufficient rates to modulate population fluctuations that might otherwise lead to local extinction (Ray *et al.* 2000). The presence of several subpopulations increases the probability that at least one will survive through periods of disturbance and consequently protect the genetic variation available for adaptation to change.

One of the recovery actions identified in the 1995 Recovery Plan and State Management Plan was securing at risk populations of LCT within the Northwest DPS. This objective was achieved by reintroducing LCT into several isolated streams within the DPS. These reintroductions accomplished several important recovery tasks: preserving unique LCT genetic material and decreasing risks to the original LCT populations from severe environmental perturbations (i.e. fire and drought). As LCT recovery continues, these isolated populations have become extremely important for providing source LCT to repopulate the networked populations.

Research shows LCT population persistence is associated with the ability to maintain connectivity among populations, i.e., networked populations. A networked system is defined as an interconnected, stream and/or stream-lake system in which individuals can migrate from or disperse into areas from which fish have been extirpated (Ray *et al.* 2000). This ability to disperse and repopulate habitats allows populations to persist (Neville-Arsenault 2003; Rieman and Dunham 2000; Ray *et al.* 2000; Dunham *et al.* 1997). Periodic repopulation by upstream or downstream sources enabled LCT to survive extreme circumstances and provided for genetic exchange (Neville-Arsenault 2003).

The conservation measures associated with this Agreement will contribute, directly and/or indirectly, to recovery of LCT. Private lands comprise only a small portion of the stream habitats within the recovery stream systems. However, LCT use private land areas to access many miles of publicly owned stream habitats for recovery activities that are currently not useable. These private lands encompass streams needed for both the isolated populations as well as networked populations. Currently, LCT are only found in the isolated streams on public lands due to private landowners reluctance to participate in activities that will benefit LCT due to fear of regulatory impacts from having threatened species on their land. Having landowners participate in this Agreement will open areas to reintroduction, expansion, and/or preservation of LCT populations needed to protect the species' genetic material. It will also help to implement networked populations and increase numbers of LCT for use in stocking networked populations. Additionally, private lands will be needed for LCT spawning areas, migration corridors, and healthy population dynamics within the networked areas.

Implementation of this Agreement is expected to result in increased numbers of LCT or amount of habitat in excess of the established baseline for each enrolled property. If all the landowners return their property to baseline conditions after 30 years, which is not expected, populations will still exist within public lands that have become linked due to conservation activities, and within private lands which serve as migration corridors, spawning habitat, and overwintering habitat. Isolated populations that were part of the baseline will have been utilized for repopulating the networked areas, and will still exist. They will no longer need to be tapped for species recovery in other areas, and therefore will be more stable. Delisting of LCT within this DPS may be realized during the 30 year permit timeline, depending on how quickly landowners sign up, habitat conditions stabilize, and LCT numbers increase.

## **12. REPORTING AND MONITORING**

**12.1 Compliance Monitoring.** Cooperative Agreements will grant NDOW, the Service and/or the NWDPS team, after reasonable prior notice to Cooperators, the right to enter enrolled lands to ensure compliance with this Agreement, including any obligations of Cooperators. Monitoring visits will focus on maintenance of baseline responsibilities and effectiveness of conservation measure(s) implemented.

**12.2 Biological Monitoring.** Prior to completing a Cooperative Agreement and Certificate of Inclusion for any enrolled property, NDOW, in cooperation with the private landowner and the Service, will complete a detailed biological assessment of that property to determine baseline conditions in cooperation with the Service and the private landowner. The biological assessment of the given property will determine baseline conditions which will include but is not limited to an evaluation of aquatic habitat quality and suitability, a characterization of species present including non-native species, if any, and a determination of management actions being practiced, and the conservation measures needed. Management practices and conservation measures will be incorporated into the subsequent Cooperative Agreement. Prior to NDOW assuming sole responsibility for the biological assessments, the Service will collaborate with NDOW for a minimum of the first five Cooperative Agreements. After this collaboration period between the two Parties ends, NDOW will submit their biological assessment with the Cooperative Agreement to the Service for our concurrence unless a unique situation arises that requires involvement from both Parties.

Following the placement of LCT on enrolled lands or when LCT are otherwise known to be present, NDOW, the Service, and/or the NWDPS team will monitor LCT by visiting occupied enrolled lands at least annually to ascertain LCT presence, monitor aquatic habitat quality, and to evaluate the efficacy of current management activities.

**12.3 Annual Report.** NDOW will make available and provide the following information to the Service in an annual report due December 31<sup>st</sup> of each year:

- a) A narrative describing the number of Cooperators and the amount of habitat potentially maintained, enhanced, or restored as a result of the management actions and/or conservation measures performed under each Cooperative Agreement.
- b) A summary of the location(s) and circumstance(s) where incidental take of LCT was anticipated including the Cooperator, the amount of habitat taken back to baseline, when the take occurred, and whether it was the result of a completed Cooperative Agreement or early termination.



- c) A summary of any interim take of LCT which may have occurred which will include the location of the Cooperator, the amount of take that occurred, and the management action or conservation measure under which it occurred. (Interim take defined as any LCT or amount of habitat that is taken above returning the property to baseline.)
- d) A narrative explanation and results of all compliance monitoring activities for each enrolled property.
- e) A narrative explanation and copies of any biological monitoring for each enrolled property within the NWDPS.
- f) A summary of actions of any Cooperators who are in non-compliance with the terms and conditions of their Cooperative Agreement or Certificate of Inclusion, and the measures employed to remediate the non-compliance.

#### 12.4 Adaptive Management

Adaptive Management allows for mutually agreed-upon changes to the Agreement's conservation measures in response to changing conditions or new information. If the expected results of the conservation measures appear ineffective, management activities can be changed or alternative activities undertaken to achieve desired results. Decisions related to adaptive management will be based on an evaluation of compliance and biological monitoring results detailed in the annual reports, and of field observations by the Cooperators and Parties. The NWDPS team may also be asked to review reports and field observations and determine whether the management actions and/or conservation measures are adequate.

Adaptive management decisions may be made at any time as deemed necessary by the Parties, however, a major evaluation of this Agreement will be implemented every fifth year to ensure that conservation goals are being achieved. Conservation measures will be evaluated to determine whether they result in the protection of LCT, i.e. reduced incidental take. The evaluation will include an assessment of incidental take on individual enrolled properties to determine if take can be prevented or reduced through modifications to management actions and/or conservation measures on aquatic habitats or adjacent lands.

If management actions or conservation measures need to be altered to improve benefits for the species, this will be done by amending future Cooperative Agreements, not by altering the responsibilities of existing Cooperators. However, if existing Cooperators agree to alter their Cooperative Agreements, modifications of their responsibilities will be addressed on a case-by-case basis. Strategies to reduce incidental take, if necessary, will be reviewed with individual Cooperators and implemented where appropriate on a voluntary basis.

### **13. MODIFICATIONS**

13.1. Modification of the Agreement. Any Party may propose modifications or amendments to this Agreement, as provided in 50 CFR 13.23, by providing written notice to, and obtaining the written concurrence of, the other Party if such a modifications do not change the determination that this Agreement will provide a net conservation benefit to LCT. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will use their best efforts to respond to proposed modifications within [15] days of receipt of such notice. Proposed modifications will become effective upon the other Party's written concurrence.

13.1.a. Modification of Cooperative Agreements. A Cooperator may propose modifications or amendments to a Cooperative Agreement by providing written notice to NDOW and the Service and obtaining written concurrence. Such notice shall include a statement of the proposed modification, the reason for it, and its expected results. The Parties will respond to proposed modifications within 60 calendar days of receiving the notice. Proposed modifications will become effective upon written concurrence from the Parties.

13.2. Amendment of the Safe Harbor Permit. The Permit may be amended to accommodate changed circumstances in accordance with all applicable legal requirements, including but not limited to the ESA, the National Environmental Policy Act, and the Service's permit regulations at 50 CFR 13 and 50 CFR 17. The Party proposing the amendment shall provide a statement describing the proposed amendment, the reasons for it, and an explanation of what, if any, effects the amendment(s) may have on LCT. A *Federal Register* notice with a 30-day comment period will be needed for any proposed amendments to the Permit.

13.3. Permit Relinquishment. If, prior to the expiration of the Permit, NDOW ceases to be able to continue to administer this Agreement, and no other entity satisfactory to the Service is willing to assume NDOW's responsibilities, NDOW will relinquish its Permit to the Service. The Service shall convert the Certificates of Inclusion that have been issued by NDOW to participating landowners into freestanding Safe Harbor Permits that authorize the same actions by the participating landowners that had been authorized by the Certificates of Inclusion, provided the participating landowners agree to continue the management activities and conservation measures established for their property. These actions shall be made per 50 CFR 13.25 for transfer of permits and scope of permit authorization.

13.3.a. Cooperator Agreement Termination. As referenced in 50 CFR 17.3 (revised May 3, 2004: FR 69:24092), Cooperators may terminate their Cooperative Agreement before the expiration date because of unforeseen circumstances. In such circumstance, the Cooperator may return the enrolled property to established baseline conditions even if the expected net conservation benefit has not been realized, provided that baseline conditions have been maintained and established conservation measures have been implemented. Cooperators may terminate their Cooperative Agreement, due to circumstances beyond their control, 10 calendar days after providing a notice to the Service. Cooperators may also terminate their Cooperative Agreement at any time for reasons other than uncontrollable circumstances, but will not have the authority to take LCT. Cooperators must give NDOW, the Service, and their representatives the opportunity to relocate LCT within 30 days of providing termination notice. Under any of the termination scenarios, Cooperators must relinquish their Certificates of Inclusion to NDOW.

13.3.b. Termination Under Other Circumstances. NDOW, in coordination with the Service, may terminate a Cooperative Agreement if it is determined that use of the enrolled property is no longer necessary for LCT recovery efforts. Following that determination and notification to the Cooperator, NDOW, and the Service, and their representatives (including the NWDPS Team) shall remove all LCT from the included properties within 60 calendar days, at their own expense, and in coordination with the Cooperator. Cooperators must then relinquish their Certificates of Inclusion to NDOW, and will then be released from any further obligations under the Cooperative Agreement.

13.4. Permit Suspension or Revocation. The Service may suspend or revoke the Permit for cause in accordance with the laws and regulations in force at the time of such suspension or revocation. The Service, as a last resort, may revoke the Permit if continuation of permitted activities would likely result in jeopardy to LCT (50 CFR 13.28(a)). In such circumstances, the Service would exercise all possible measures to avoid revoking the Permit.

13.5. Baseline Adjustment. Unforeseen circumstances could involve habitat impacts resulting from catastrophic (*force majeure*) events such as hurricanes, flash floods, severe drought, lethal forest fires, or insect/disease epidemics. Such events are beyond the reasonable control of the Cooperator, and did not occur through fault or negligence, including but not limited to “acts of God” or sudden actions of the elements such as those described above. Such catastrophes could either locally destroy the species population or render the habitat unsuitable, thereby reducing population numbers or occupied acreage below the original baseline conditions. For such circumstances beyond the control of the Cooperator, the Cooperative Agreement could be terminated, or NDOW and the Service could agree to revise the baseline conditions to reflect the new circumstances.

13.6. Remedies. Each Party shall have all remedies otherwise available to enforce the terms of the Agreement and the Safe Harbor Permit, except that no Party shall be liable in damages for any breach of this Agreement, any performance or failure to perform an obligation under this Agreement or any other cause of action arising from this Agreement.

13.7. Dispute Resolution. Both NDOW and the Service agree to work together in good faith to resolve any disputes, using dispute resolution procedures agreed upon by all Parties.

## **14. ADDITIONAL MEASURES**

14.1. Succession and Transfer of Cooperative Agreements and Certificates of Inclusion. The rights and obligations under each Cooperative Agreement shall apply to the owner of the enrolled property, and are transferable to subsequent non-Federal property owners pursuant to 50 CFR 13.25. After becoming a party to a Cooperative Agreement and Certificate of Inclusion, the new owner(s) will have the same rights and obligations with respect to the enrolled property as the original owner. The new owner(s) also will have the option of receiving Safe Harbor assurances by signing a new Cooperative Agreement and receiving a new Certificate of Inclusion. Cooperators shall notify NDOW of any transfer of enrolled land ownership; NDOW will attempt to contact the new owner, explain the baseline responsibilities applicable to the property, and seek to interest the new owner in signing the existing Cooperative Agreement or a new one to benefit LCT on the property. Assignment or transfer of the Cooperative Agreement shall be governed by Service regulations in force at the time.

14.2. Availability of Funds. Implementation of this Agreement is subject to the requirements of the Anti-Deficiency Act and the availability of appropriated funds. Nothing in this Agreement will be construed by the Parties to require the obligation, appropriation, or expenditure of any funds from the U.S. Treasury. The Parties acknowledge that the Service will not be required under this Agreement to expend any Federal agency’s appropriated funds unless and until an authorized official of that agency affirmatively acts to commit to such expenditures in writing.

14.3. No Third-Party Beneficiaries. This Agreement does not create any new right or interest in any member of the public as a third-party beneficiary, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the Parties to this Agreement with respect to third parties shall remain as imposed under existing law.

14.4. Notices and Reports. Any notices and reports, including monitoring and annual reports, required by this Agreement shall be delivered to the persons listed below, as appropriate:

Field Supervisor,  
U.S. Fish and Wildlife Service  
1340 Financial Boulevard, Suite 234,  
Reno, Nevada 89502

Complex Manager  
Lahontan National Fish Hatchery Complex  
710 Highway 395  
Gardnerville, Nevada 89410

IN WITNESS WHEREOF, THE PARTIES HERETO have executed this Safe Harbor Agreement to be in effect as of the date that the Service issues the permit.

\_\_\_\_\_  
Permittee  
Director, Terry C. Crawford  
Nevada Department of Wildlife

\_\_\_\_\_  
Date

\_\_\_\_\_  
Deputy Attorney General for Attorney General  
State of Nevada  
Approved as to Form by;

\_\_\_\_\_  
Date

\_\_\_\_\_  
California-Nevada Operations Manager  
California-Nevada Operations Office  
U.S. Fish and Wildlife Service

\_\_\_\_\_  
Date